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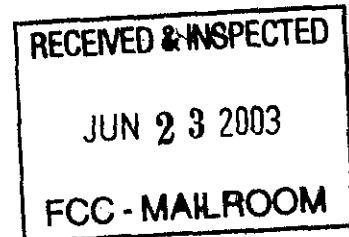
Suzanne Loomis  
Vice President  
Assistant General Counsel

**Primerica Financial Services**  
3120 Breckinridge Boulevard, Bldg 500  
Duluth, GA 30099  
Tel 770 564 6387  
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ORIGINAL

June 19, 2003

Marlene Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S. W. Room TW-A325  
Washington, DC 20054



Re: Ex Parte Communication in the matter of Notice of Proposed Rulemaking  
Regarding Rules and Regulations Implementing the Telephone Consumer Protection Act  
of 1991, CG Docket No. 02-278.

Dear Madam Secretary,

As a representative of Primerica Financial Services, a member of Citigroup, I would like to affirm that the following items were discussed and recommendations made by Primerica at the June 18, 2003 conference call between Suzanne Loomis and Peter Schneider of Primerica; Heather Wingate and Jim Scott of Citigroup; Margaret Egler, Deputy Bureau Chief and her staff, in reference to the above-captioned matter:

- We discussed alternate examples of language we propose for an exemption to the FCC's "No Call" rule.
- We discussed the state "No Call" rules that include exemptions and the specific language used in the states.

Additionally, the enclosed letter and copy of email was mailed to Margaret Elger, Deputy Bureau Chief, FCC, Jessica Rosenworcel, Legal Advisor for Commissioner Capps, Scott Bergmann, Legal Advisor for Commissioner Adelstein, Daniel Gonzalez, Legal Advisor for Commissioner Martin, Matthew Brill, Legal Advisor for Commissioner Abernathy and Bryan Tramont and Trey Hanberry, Legal Advisors for Commissioner Powell. Furthermore, Citigroup representative Heather Wingate, followed up by phone and email with each of the above staff members of the Commissioners.

This is an Ex Parte Communication filed pursuant to Section 1.1206 of the Commissioner's rules. One copy of this memorandum is attached.

Sincerely,

Suzanne Loomis  
Vice President, Assistant General Counsel

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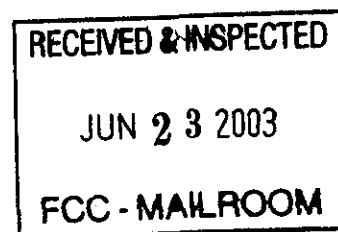
A member of citigroup



Office of the General Counsel  
Peter W. Schneider  
*Executive Vice President &  
General Counsel*

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June 18, 2003



Ms. Margaret M. Egler  
Deputy Bureau Chief  
Consumer & Consumer Affairs Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Room 5-C754  
Washington, DC 20554

Re: CG Docket 02-278  
Rules Implementing the Telephone Consumer Protection Act of 1991

Dear Ms. Egler:

We are a financial services business that has over 100,000 individually licensed representatives nationwide. Most of our representatives work part-time from their homes serving a neglected middle-income market. Primerica does not have "bricks and mortar" retail locations.

The Public Understands the Need for a "Networking" Exemption

Do Not Call laws are not new. For years, states have been considering and enacting these laws. Often, the laws are the subject of intense public debate. State legislators have had to balance business and consumer interests, as well as attempt to understand the desires of constituents within each jurisdiction. Notably, Primerica's business model – which consists of setting appointments using the telephone with clients whose names are known to the representative because of a personal relationship or referral – can operate under the laws of 36 of 50 states (70%). A trend has developed in favor of such exemptions. Just this week, Louisiana included a personal relationship/referral exemption in its Do Not Call law.

If the FCC simply adopts the FTC's rulemaking without consideration of the FCC's broader jurisdictional reach, it will, in effect, *invalidate* the desires of these 36 states. Small businesses and home-based entrepreneurs, though not telemarketers, depend on the use of the telephone because they conduct business other than from a retail location. Inclusion of such an exemption, on the other hand, will be consistent with the

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public's desire, as reflected in state legislative action. Indeed, based on our own experience, clients who receive a telephone call from someone they know or from a personal referral have no expectation that such a call would be blocked by having their name on a Do Not Call list.

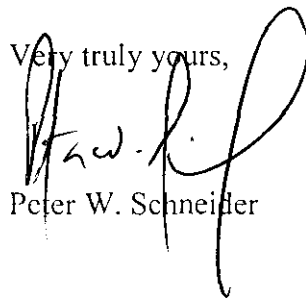
In order to assist the Commission in its analysis of this issue, we have enclosed language used in the states to exempt networking businesses. We also enclose a map showing the states that have enacted these exemptions.

Harmonization with the FTC

It is undeniable that the FTC jurisdiction does not extend to *intrastate* calls. If the FCC fails to take this limitation into account, it will be grossly *expanding* the substantive effect of the FTC rule, contrary, we respectfully submit, to the Congressional directive to harmonize the two rules. Had Congress itself considered a Do Not Call list, there is no question, we believe, that there would be carve outs for businesses such as ours.

We appreciate tremendously your consideration of these views. Needless to say, if you have any questions about these matters, feel free to call Suzanne Loomis of my office (770-564-6387) (who is very familiar with Do Not Call issues) or me to discuss them further.

Very truly yours,



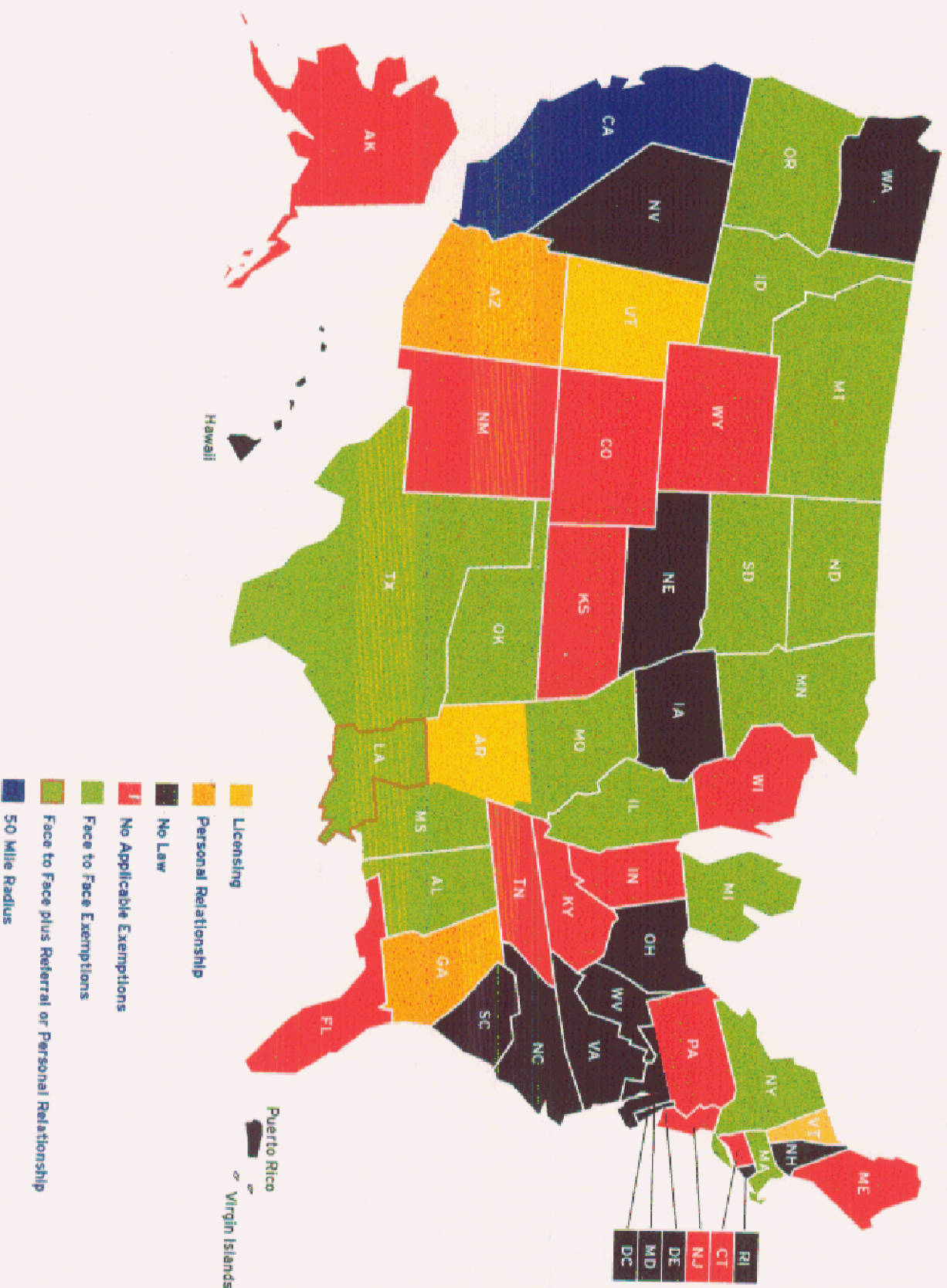
Peter W. Schneider

cc: Heather Wingate, Citigroup, Washington, DC

**Talking points for 4:00 call Wednesday, June 18, 2003 with Margaret Egler, Deputy Bureau Chief, FCC Bureau of Consumer Affairs**

- ✓ Statutory language for state exceptions and a map is attached;
- ✓ Calls placed pursuant to a networking business model like Primerica's are presently permitted in 36 of 50 states (70%). The FTC rule effectively permits these businesses to place calls since most are intrastate;
- ✓ Promulgation of a Do Not call rule that tracks the identical language of the FTC rule by only providing exceptions for consent and established business relationships will result in a draconian assault on the current status quo by prohibiting the Primerica business model in all of the 50 states. For all practical purposes, it will outlaw network marketing;
- ✓ Promulgation of a Do Not call rule that tracks the identical language of the FTC rule by only providing exceptions for consent and established business relationships will *expand* the substantive effect of the FTC rule contrary to Congressional directive to harmonize the two rules;
- ✓ Networking businesses receive some protection under 22 of the 36 states that have enacted No Call laws. FCC action will override these laws whether or not preemption is incorporated in the rule or not;
- ✓ Of the 36 states with No Call lists 25 or 2/3 have laws more permissive than an FCC rule containing no exceptions for calls other than express request and preexisting business relationship. Only 11 have laws as or more restrictive (AK, CO, FL, KS, KY, ME, NJ, NM, PA, TN, WI) than such a rule.

# Status of Do Not Call Laws



## FACE-TO-FACE STATUTORY LANGUAGE

**Alabama Section 8-19A-4 (3)(C):** The provisions of this chapter do not apply to: . . . A person soliciting . . . Without the intent to complete, and who does not complete, the sales presentation during the telephone solicitation, but who completes the sales presentation at a later face-to-face meeting between the seller and the prospective purchaser. Enacted 6/99

**Idaho Section 48-1002(10)(a):** Telephone solicitation means: (a) Any unsolicited telephone call to a purchaser for the purpose of asking, inducing, inviting, requesting or encouraging the purchaser to purchase or invest in goods or services during the course of a telephone call. Enacted 4/17/00

**Illinois cha. 815 Section 402/5 (e)(5)(A):** Telephone solicitation . . . does not include communications: by or on behalf of an individual licensed under the Real Estate License Act of 2000 . . . or as an insurance producer under the Illinois Insurance Code who either: is setting or attempting to set a face to face appointment for actions relating to that individual's real estate or insurance business. . . Enacted 8/9/02

**Louisiana (H.B. NO. 173):** "Telephonic Solicitation" does not include voice or data communications made for any of the following reasons: (g) Without completing or attempting to complete a sale, said sale to be completed only after a face-to-face meeting between the telephonic solicitor and the person called at the telephonic solicitor's primary place of business or at another location selected by the purchaser. The call must be the result of a referral of the person called to the telephonic solicitor or be placed to an individual who is personally known to the telephonic solicitor. Passed 6/16/03

**Massachusetts 159C; Section 1:** "Unsolicited telephonic sales call", a telephonic sales call other than a call made: . . . (iv) in which the sale of goods and services is not completed, and payment or authorization of payment is not required, until after a face-to-face sales presentation by the telephone solicitor or a meeting between the telephone solicitor and customer. Enacted 8/10/02

**Michigan 445.111(m)(iii) :** Telephone solicitation does not include any of the following: A voice communication to a residential telephone subscriber in which the caller requests a face to face meeting with the residential telephone subscriber to discuss a purchase, sale, or rental of, or investment in, goods or services, but does not urge the residential telephone subscriber to make a decision to purchase, sell, rent, invest, or make a deposit on that good or service during the voice communication. Enacted 12/30/02

**Minnesota 325E.311 subd.6(4):** Telephone solicitation does not include communications: by a person soliciting without the intent to complete, and who does not in fact complete, the sales presentation during the call, but who will complete the sales presentation at a later face-to-face meeting between the solicitor who makes the call and the prospective purchaser. Enacted 5/15/02

**Mississippi 77-3-609C(ii)(iii):** The provisions of this act shall not apply to: "A person soliciting: Without the intent to complete, and who does not complete, the sales presentation during the telephone solicitation, but who completes the sales presentation at a later face-to-face meeting between the person soliciting and the prospective purchaser or consumer." Enacted 4/9/03

**Missouri 407.1095(3)(e):** "Telephone solicitation" . . . does not include communications: . . . By a natural person responding to a referral, or working from his or her primary residence, or a person licensed by the state of Missouri to carry out a trade, occupation or profession who is setting or attempting to set an appointment for actions relating to that licensed trade, occupation or profession within the state or counties contiguous to the state. Enacted 6/27/00

**Montana Ch 589 Section 1(4)(f):** Telephone solicitation does not include communications: by a person licensed by the state of Montana to carry out a trade, occupation, or profession who is setting or attempting to set an appointment for actions relating to that licensed trade, occupation or profession within the state. Enacted 5/9/03

**New York Section 399 section 1(j)(iv):** "Unsolicited telemarketing sales call" means nay telemarketing sales call other than a call made . . . in which the sale of goods and services is not completed, and payment or authorization of payment is not required, until after a face-to-face sales presentation by the telemarketer or a meeting between the telemarketer and the customer. . Enacted 10/12/00

**North Dakota 51-26-01: (7)** Telephone solicitation does not include communications: (e) By the individual soliciting without the intent to complete, and who does not in fact complete, the sales presentation during the call, but who will complete the sales presentation at a later face-to-face meeting between the individual solicitor or person who makes the initial call and the prospective purchaser. Enacted 4/16/03

**Oklahoma Section 775B6:** Telemarketing does not include a telephone call which is made for the sole purpose of arranging a subsequent face-to-face meeting between a salesperson and the consumer. Enacted 4/15/02

**Oregon Section 646.551(2)(i):** "Telephonic seller" does not include any of the following: A person soliciting without the intent to complete and who does not compete the sales presentation during the telephone solicitation and who only competes the sale presentation at a later face-to-face meeting between the solicitor and the prospective purchaser, unless at that later meeting the solicitor collects or attempts to collect payment for delivery of items purchased. Enacted 4/20/99

**South Dakota 49-31-1: (32)** "Unsolicited telephone call," any telephone solicitation call other than a call made (d) To any person for the purpose of obtaining information and establishing a date and time for an appointment with the telephone solicitor which will

take place at the solicitor's place of business or the consumer's home and the call is not made by an automated telephone dialing system. Enacted 3/21/03

**Texas Section 43.003(b)(5)(B):** "This chapter does not apply to a call made by a state licensee if: the solicited transaction is not completed until a face-to-face sales presentation by the seller and the consumer is not required to pay or authorize payment until after the presentation." Enacted 6/17/01

### **PERSONAL RELATIONSHIP / REFERRAL STATUTORY LANGUAGE**

**Arizona Section 44-1282:** This section does not apply to...calls made...(2) In response to a referral from a natural person with whom the consumer has a personal relationship. Enacted 5/19/03

**Georgia 46-5-27(b)(3):** "Telephone solicitation"...does not include communications...(B) By or on behalf of any person or entity with whom a residential subscriber has a prior or current business or personal relationship. Enacted 3/12/98

**Louisiana (H.B. NO. 173):** "Telephonic Solicitation" does not include voice or data communications made for any of the following reasons: (g) Without completing or attempting to complete a sale, said sale to be completed only after a face-to-face meeting between the telephonic solicitor and the person called at the telephonic solicitor's primary place of business or at another location selected by the purchaser. The call must be the result of a referral of the person called to the telephonic solicitor or be placed to an individual who is personally known to the telephonic solicitor. Passed 6/16/03

**Minnesota Chapter 325E.311(Subd 6):** Telephone solicitation does not include communications...(2) by or on behalf of any person or entity with whom a residential subscriber has a prior or current business or personal relationship. Enacted 5/15/02

**Missouri Section 407.1095(3):** "Telephone solicitation"...does not include communications...(b) By or on behalf of any person or entity with whom a residential subscriber has had a...current business or personal relationship; ...(e) By a natural person responding to a referral, or working from his or her primary residence. Enacted 6/27/00

**Montana 30-14-1:** (4) Telephone solicitation does not include communications...(b) by or on behalf of any person or entity with whom a residential subscriber...has a current business or personal relationship; (e) by a natural person responding to a referral or working from the person's primary residence. Enacted 5/9/03

**North Dakota 51-26-01:** (7) Telephone solicitation does not include communications...(b) by or on behalf of any person with whom the subscriber has an established personal or business relationship. Enacted 4/16/03



## **Suggested Language Providing Exemption for Primerica Model Businesses**

### **1 Exemption based exclusively on geographic limitation.**

**“Shall not include calls placed within a 100 mile radius”**

**OR**

**“Shall not include intrastate calls”**

√ Most consonant with FTC jurisdiction

### **2 Exemption based exclusively on nature of the relationship.**

**“Shall not include calls based on a personal relationship or referral to set a subsequent face to face meeting”**

√ Protects “mom and pop” businesses

√ Restricts traditional telemarketers

### **3 Exemption based exclusively on the fact that no sale will be consummated on the telephone**

**“But shall not include calls in which the sale of goods or services is not completed and payment or authorization of payment is not required until after a face to face sales presentation by the telephone solicitor or a meeting between the telephone solicitor and the customer.”**

√ 13 states have approved variations

### **4 Combination of exemptions based on geography and no sale consummated over the telephone**

A combination of the above exemptions may further reduce the opportunity for traditional telemarketers to take advantage of the exemption. For example, a combination of the geographic limitation with the face-to-face restriction could read as follows:

**“But shall not include calls within a 100 mile radius (or intrastate calls) in which the sale of goods or services is not completed and payment or authorization of payment is not required until after a face-to-face sales presentation by the telephone solicitor or a meeting between the telephone solicitor and the customer.”**

§ 8-19A-4

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Alabama

§ 8-19A-4. Exemptions.

The provisions of this chapter do not apply to:

- (1) A person engaging in commercial **telephone solicitation** where the solicitation is an isolated transaction and not done in the course of a pattern of repeated transactions of like nature.
- (2) A person making calls for religious, charitable, political, educational, or other noncommercial purposes or a person soliciting for a nonprofit corporation if that corporation is properly registered with the Secretary of State and is included within the exemption of the Alabama Revenue Code or Section 501(c)(3) of the Internal Revenue Code or rural electric cooperatives formed under Chapter 6 of Title 37 of the Code of Alabama or affiliates or subsidiaries thereof.
- (3) A person soliciting:
  - a. Without the intent to complete or obtain provisional acceptance of a sale during the **telephone solicitation**.
  - b. Who does not make the major sales presentation during the **telephone solicitation**.
  - c. Without the intent to complete, and who does not complete, the sales presentation during the **telephone solicitation**, but who completes the sales presentation at a later **face-to-face** meeting between the seller and the prospective purchaser. However, if a seller, directly following a **telephone solicitation**, causes an individual whose primary purpose it is to go to the prospective purchaser to collect the payment or deliver any item purchased, this exemption does not apply.
- (4) Any licensed securities, commodities, or investment broker, dealer, or investment adviser, when soliciting within the scope of his or her license. As used in this section, "licensed securities, commodities, or investment broker, dealer, or investment adviser" means a person subject to license or registration by the Securities and Exchange Commission, by the National Association of Securities Dealers or other self-regulatory organization as defined by the Securities Exchange Act of 1934 (15 U.S.C. Section 781), or by an official or agency of this state or of any state, commonwealth or territory of the United States.
- (5) Any licensed associated person of a securities, commodities, or investment broker, dealer, or investment adviser, when soliciting within the scope of his or her license. As used in this section, "licensed associated person of a securities, commodities, or investment broker, dealer, or investment adviser" means any associated person registered or licensed by the National Association of Securities Dealers or other self-regulatory organization as defined by the Securities Exchange Act of 1934 (15 U.S.C. Section 781), or by an official or agency of this state or of any state, commonwealth or territory of the United States.
- (6) A person primarily soliciting the sale of a newspaper, periodical of general circulation, or magazine.
- (7) A book, video, or record club or contractual plan or arrangement:
  - a. Under which the seller provides the consumer with a form which the consumer may use to instruct the seller not to ship the offered merchandise.
  - b. Which is regulated by the Federal Trade Commission trade regulation concerning "use of negative option plans by sellers in commerce."
  - c. Which provides for the sale of books, records, or videos which are not covered under paragraph a. or paragraph b., including continuity plans, subscription arrangements, standing order arrangements, supplements, and series arrangements under which the seller periodically ships merchandise to a consumer who has consented in advance to receive the merchandise on a periodic basis.
- (8) Any supervised financial institution or parent, subsidiary, or affiliate thereof. As used in this section, "supervised financial institution" means any commercial bank, trust company, savings and

loan association, mutual savings bank, credit union, industrial loan company, consumer finance lender, commercial finance lender, or insurer, provided that the institution is subject to supervision by official or agency of this state, of any state, or of the United States.

(9) Any licensed insurance broker, agent, customer representative, or solicitor when soliciting within the scope of his or her license. As used in this section, "licensed insurance broker, agent, customer representative, or solicitor" means any insurance broker, agent, customer representative, or solicitor licensed by an official or agency of this state or of any state of the United States licensed in accordance with the Alabama Insurance Code (Title 27).

(10) A person soliciting the sale of services provided by a cable television system operating under authority of a franchise or permit.

(11) A business-to-business sale where:

a. The commercial telephone seller has been operating continuously for at least three years under the same business name and has at least 50 percent of its dollar volume consisting of repeat sales to existing businesses.

b. The purchaser business intends to resell or offer for purposes of advertisement or as a promotional item the property or goods purchased.

c. The purchaser business intends to use the property or goods purchased in a recycling, reuse, remanufacturing, or manufacturing process.

(12) A person who solicits sales or advertising by periodically publishing and delivering a catalog, periodical, or magazine of the seller's merchandise or ad purchasers, merchandise to prospective purchasers, if the catalog, periodical, or magazine:

a. Contains a written description or illustration of each item or service offered for sale.

b. Includes the physical, permanent business address or home address of the seller.

c. Includes at least 20 pages of written material and illustration and is distributed in more than one state.

d. Has an annual cumulative circulation by mailing of not less than 150,000.

(13) A person who solicits contracts for the maintenance or repair of goods previously purchased from the person making the solicitation or on whose behalf the solicitation is made.

(14) A telephone company or utility company which is regulated by the Alabama Public Service Commission, or any employee, officer, director, or authorized sales representative of such telephone company or utility company when soliciting products or services which would be subject to Public Service Commission regulation on behalf of such telephone company, utility company, or a Federal Communications Commission licensed cellular telephone company or affiliates or other bona fide radio telecommunication services provider. Provided, however, that such authorized sales representatives shall be subject to the same rules and regulations as the exempted company through the Public Service Commission.

(15) A person who is licensed pursuant to Chapter 13, Title 34, who is soliciting within the scope of the license.

(16) A person licensed pursuant to Section 8-19A-5 when soliciting pursuant to that license.

(17) An issuer or a subsidiary of an issuer that has a class of securities which is subject to Section 12 of the Securities Exchange Act of 1934 (15 U.S.C. Section 781) and which is either registered or exempt from registration under paragraph (A), paragraph (B), paragraph (C), paragraph (E), paragraph (F), paragraph (G), or paragraph (H) of subsection (g)(2) of that section.

(18) A business soliciting exclusively the sale of telephone answering services provided that the telephone answering services will be supplied by the solicitor.

(19) A person soliciting a transaction regulated by the Commodity Futures Trading Commission if the person is registered or temporarily licensed for this activity with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. Section 1 et seq.) and the registration or license has not expired, or been suspended or revoked.

(20) A person soliciting the sale of food or produce if the solicitation neither intends to result in, or actually results in, a sale which costs the purchaser in excess of five hundred dollars (\$500).

(21) A person soliciting business from prospective consumers who have an existing business relationship with or who have previously purchased from the business enterprise for which the solicitor is calling, if the solicitor is operating under the same exact business name.

(22) A person who has been operating, for at least one year, a retail business establishment under the same name as that used in connection with telemarketing, and both of the following occur on a continuing basis:

a. Either products are displayed and offered for sale or services are offered for sale and provided at the business establishment.

b. A majority of the seller's business involves the buyer obtaining the products or services at the seller's location.

(23) Any person who is duly licensed under Section 34-27-66.

(24) Any telephone marketing service company which provides telemarketing sales services under contract to sellers and has been operating continuously for at least five years under the same business name and 75 percent of its contracts are performed on behalf of persons exempted from this chapter by this section.

(25) A person or business soliciting the sale of an annual publication comprised of a biographical compilation of notable and distinguished individuals.

(Acts 1994, No. 94-650, p. 1220, § 4; Acts 1994, 1st Ex. Sess., No. 94-769, p. 54, § 1.)

## HISTORY

The 1994 amendment, 1st Ex. Sess., effective May 6, 1994, in subdivision (9) inserted "customer representative" throughout the subdivision, and inserted "licensed by an official or agency of this state or of any state of the United States"; and in subdivision (14) inserted the first occurrence of "company," inserted "or utility company" and inserted the second occurrence of "utility company."

END OF DOCUMENT



# Idaho Statutes

*Idaho*

## TITLE 48 MONOPOLIES AND TRADE PRACTICES CHAPTER 10

### IDAHO TELEPHONE SOLICITATION ACT

48-1002. DEFINITIONS. In this chapter:

(1) "Business days" means all days of the week except Saturdays and Sundays and other legal holidays as defined in section 73-108, Idaho Code.

(2) "Conducting business" means making telephone solicitations either to or from locations within the state of Idaho.

(3) "Goods" means any property, tangible or intangible, real, personal or mixed other article, commodity, or thing of value.

(4) "Minor" means any person less than eighteen (18) years of age.

(5) "Newspaper of general circulation" means a newspaper which holds a second class mailing permit from the United States postal service, has at least two hundred (200) is made up of at least four (4) pages of at least five (5) columns, is not produced by type of mimeographing process, and has been published or distributed within the state on a weekly basis for at least seventy-eight (78) consecutive weeks, or on a daily basis defined to be no less than five (5) days of any one (1) week, at least twelve (12) months immediately preceding any telephone solicitation done by or on behalf of such newspaper.

(6) "Person" means natural persons, partnerships, both limited and general, corporations both foreign and domestic, companies, trusts, business entities, associations, both incorporated and unincorporated, and any other legal entity or any group associated in fact although legal entity, or any agent, assign, heir, servant, employee or representative thereof.

(7) "Purchaser" means a person who is solicited to become or does become obligated as a telephone solicitor.

(8) "Services" means any work, labor, help, assistance or instruction wherever rendered or performed.

(9) "Telephone directory of general circulation" means a directory containing the names of individual residents and/or businesses which is published on a community-wide regional basis and which is widely available to persons residing in such community or through free distribution or direct purchase of said directory without the requirement of purchases or affiliations.

(10) "Telephone solicitation" means:

(a) Any unsolicited telephone call to a purchaser for the purpose of asking, inducing, inviting, requesting, or encouraging the purchaser to purchase or invest in goods or services during the course of a telephone call; or

(b) Any communication in which:

(i) A free gift, award, or prize is offered, or in which it is represented that goods or services are offered below the regular price of the goods or services;

(ii) A return telephone call is invited or the communication is followed up by the purchaser by the telephone solicitor; and

(iii) It is intended during the course of the return or follow-up call with the purchaser an agreement to purchase, or a purchase be made.

(c) For purposes of this subsection, "communication" means a written or oral statement or notification or advertisement transmitted to the purchaser through any means.

(11) "Telephone solicitor" means any person who, on his own behalf or through other persons or through use of an automatic dialing-announcing device, engages in a telephone solicitation.

(12) "Unsolicited advertisement" means any advertisement offering goods or services which is transmitted to any person without that person's prior express invitation or unless an established business relationship exists between the sender and recipient which has been terminated by either party.

(13) "Written confirmation" means a writing that includes the following information: date of purchase, the telephone solicitor's complete address and registration number, all goods and/or services purchased, a listing of the price of each good and/or service, the total obligation incurred by the purchaser, and the notice of cancellation as set forth in subsection (2) of section 48-1004, Idaho Code.

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## 402/5. Definitions

*Mlinar*

### § 5. Definitions. As used in this Act:

- (a) "Residential subscriber" means a person or spouse who has subscribed to either residential telephone service from a local exchange company or public mobile services, as defined by Section 13-214 of the Public Utilities Act, [FN1] a guardian of the person or the person's spouse, or an individual who has power of attorney from or an authorized agent of the person or the person's spouse.
- (b) "Established business relationship" means the existence of an oral or written transaction, agreement, contract, or other legal state of affairs involving a person or entity and an existing customer under which both parties have a course of conduct or established pattern of activity for commercial or mercantile purposes and for the benefit or profit of both parties. A pattern of activity does not necessarily mean multiple previous contacts. The established business relationship must exist between the existing customer and the person or entity directly, and does not extend to any related business entity or other business organization of the person or entity or related to the person or entity or the person or entity's agent including but not limited to a parent corporation, subsidiary partnership, company or other corporation or affiliate.
- (c) "Existing customer" means an individual who has either:
  - (1) entered into a transaction, agreement, contract, or other legal state of affairs between a person or entity and a residential subscriber under which the payment or exchange of consideration for any goods or services has taken place within the preceding 18 months or has been arranged to take place at a future time; or
  - (2) opened or maintained a debit account, credit card account, or other credit or discount program offered by or in conjunction with the person or entity and has not requested the person or entity to close such account or terminate such program.
- (d) "Registry" means the Restricted Call Registry established under this Act.
- (e) "Telephone solicitation" means any voice communication over a telephone line from a live operator, through the use of an autodialer or autodialer system, as defined in Section 5 of the Automatic Telephone Dialers Act, [FN2] or by other means for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, or for the purposes of soliciting charitable contributions but does not include communications:
  - (1) to any residential subscriber with that subscriber's prior express invitation or permission when a voluntary 2-way communication between a person or entity and a residential subscriber has occurred with or without an exchange of consideration. A telephone solicitation is presumed not to be made at the express request of a subscriber if one of the following occurs, as applicable:
    - (A) The telephone solicitation is made 30 business days after the last date on which the subscriber contacted a business with the purpose of inquiring about the potential purchase of goods or services.
    - (B) The telephone solicitation is made 30 business days after the last date on which the subscriber consented to be contacted.
    - (C) The telephone solicitation is made 30 business days after a product or service becomes available where the subscriber has made a request to the business for that product or service that is not then available, and requests a call when the product or service becomes available;
  - (2) by or on behalf of any person or entity with whom a residential subscriber has an established business relationship which has not been terminated in writing by either party and which is related to the nature of the established business relationship;
  - (3) by or on behalf of any person or entity with whom a residential subscriber is an existing customer, unless the customer has stated to the person or entity or the person or entity's agent that he or she no

longer wishes to receive the telemarketing sales calls of the person or entity, or unless the nature of the call is unrelated to the established business relationship with the existing customer;

, by or on behalf of an organization that is exempt from federal income taxation under Section 501(c) of the Internal Revenue Code, [FN3] but only if the person making the telephone solicitation immediately discloses all of the following information upon making contact with the consumer:

(A) the caller's true first and last name; and

(B) the name, address, and telephone number of the organization;

(5) by or on behalf of an individual licensed under the Real Estate License Act of 2000 [FN4] or as an insurance producer under the Illinois Insurance Code [FN5] who either:

(A) is setting or attempting to set a face to face appointment for actions relating to that individual's real estate or insurance business; or

(B) is encouraging or attempting to encourage the purchase or rental of, or investment in, property, goods, or services, which cannot be completed, and for which payment or authorization of payment is not required, until after a written or electronic agreement is signed by the residential subscriber; or

(6) until July 1, 2005, by or on behalf of any entity over which the Federal Communications Commission or the Illinois Commerce Commission has regulatory authority to the extent that, subject to that authority, the entity is required to maintain a license, permit, or certificate to sell or provide telecommunications service, as defined in Section 13-203 of the Public Utilities Act, [FN6] while the entity is engaged in telephone solicitation for inter-exchange telecommunications service, as defined in Section 13-205 of the Public Utilities Act, [FN7] or local exchange telecommunications service, as defined in Section 13-204 of the Public Utilities Act [FN8] or to the extent, subject to the regulatory authority of the Federal Communications Commission, the entity is defined by Title 47 Section 522(5) of the United States Code, or providers of information services as defined by Title 47 Section 153(20) of the United States Code.

#### CREDIT(S)

#### 2003 Electronic Pocket Part Update

P.A. 92-795, § 5, eff. Aug. 9, 2002.

[FN1] 220 ILCS 5/13-214.

[FN2] 815 ILCS 305/5.

[FN3] 26 U.S.C.A. § 501(c).

[FN4] 225 ILCS 454/1-1 et seq.

[FN5] 215 ILCS 3/1 et seq.

[FN6] 220 ILCS 5/13-203.

[FN7] 220 ILCS 5/13-205.

[FN8] 220 ILCS 5/13-204.

END OF DOCUMENT

HLS 03-947

REENGROSSED

Regular Session, 2003

HOUSE BILL NO. 173

BY REPRESENTATIVE PINAC

*Louisiana*

TELEPHONES: Adds an additional exception to the "do not call" listing law  
for certain incomplected telephonic solicitations

AN ACT

To enact R.S. 45:844.12(4)(g), relative to telephonic solicitations; to provide  
for definitions; to provide for exceptions; and to provide for related  
matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 45:844.12(4)(g) is hereby enacted to read as follows:

§844.12. Definitions

As used in this Chapter, the following terms and phrases shall  
have the meanings hereinafter ascribed to them:

\* \* \*

(4) "Telephonic solicitation" means any voice or data  
communication made by a telephonic solicitor to a residential  
telephonic subscriber for the purpose of encouraging a sale or rental of  
or investment in property, consumer goods, or services; or for the  
purpose of encouraging an extension of credit for property, consumer  
goods, or services; or for the purpose of obtaining information that will  
or may be used for the direct solicitation of a sale or rental of or



1 investment in property, consumer goods, or services or an extension of  
2 credit for such purposes; or for the solicitation of a contribution to a  
3 charitable organization, but does not include voice or data  
4 communications made for any of the following reasons:

5 \* \* \*

6 (g) Without completing or attempting to complete a sale, said  
7 sale to be completed only after a face-to-face meeting between the  
8 telephonic solicitor and the person called at the telephonic solicitor's  
9 primary place of business or at another location selected by the  
10 purchaser. The call must be the result of a referral of the person called  
11 to the telephonic solicitor or be placed to an individual who is  
12 personally known to the telephonic solicitor. If placed as a result of a  
13 referral, the telephonic solicitor must provide to the person called the  
14 name of the person who made the referral. If the person called does not  
15 wish to be called after such initial call, then the telephonic solicitor  
16 shall not call that person and shall maintain a list of such persons. This  
17 exemption shall not apply if directly following the sale the telephonic  
18 solicitor attempts to deliver an item or collect payment from the person  
19 called or causes another to do so.

20 \* \* \*

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#### DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument.

---

Pinac

HB No. 173

**Abstract:** Exempts from the "do not call" listing law those telephonic solicitations which result from referrals when the solicitor does not

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*Massachusetts*

+++ CURRENT VERSION +++  
VIEW ALL VERSIONS

## § 1. Definitions

As used in this chapter, the following words shall, unless the context clearly requires otherwise, have the following meanings:--

"Caller identification service or device", a telephone service or device which permits a consumer to see the telephone number of incoming calls.

"Consumer", an individual who is a resident of the commonwealth and a prospective recipient of consumer goods or services.

"Consumer goods or services", an article or service that is purchased, leased, exchanged or received primarily for personal, family or household purposes including, but not limited to, stocks, bonds, mutual funds, annuities and other financial products.

"Doing business in the commonwealth", conducting telephonic sales calls: (i) from a location in the commonwealth or (ii) from a location outside of the commonwealth to consumers in the commonwealth.

"Existing customer", a residential telephone subscriber with whom the person or entity making a telephonic sales call has maintained an account or had a business relationship within the previous 24 months.

"Marketing or sales solicitation", the initiation of a telephone call or message to encourage the purchase or rental of, or investment in, property, goods or services, that is transmitted to a consumer, but not including a telephone call or message: (i) to a consumer with that consumer's prior express written or verbal invitation or permission; (ii) by a tax-exempt nonprofit organization; (iii) by an individual or organization for a noncommercial purpose, such as a poll or survey; or (iv) to a consumer in response to a visit made by such consumer to an establishment selling, leasing or exchanging consumer goods or services at a fixed location.

"Office", the office of consumer affairs and business regulation.

"Telephonic sales call", a call made by a telephone solicitor to a consumer for the purpose of: (i) engaging in a marketing or sales solicitation; (ii) soliciting an extension of credit for consumer goods or services; or (iii) obtaining information that will or may be used for marketing or sales solicitation or exchange of or extension of credit for consumer goods or services.

"Telephone solicitor", an individual, association, corporation, partnership, limited partnership, limited liability company or other business entity, or a subsidiary or affiliate thereof, doing business in the commonwealth who makes or causes to be made a telephonic sales call.

"Unsolicited telephonic sales call", a telephonic sales call other than a call made: (i) in response to an express written or verbal request of the consumer called; (ii) primarily in connection with an existing debt or contract, payment or performance of which has not been completed at the time of the call; (iii) to an existing customer unless such customer has stated to the telephone solicitor that such customer no longer wishes to receive the telephonic sales calls of such telephone solicitor; or (iv) in which the sale of goods and services is not completed, and payment or authorization of payment is not required, until after a face-to-face sales presentation by the telephone solicitor or a meeting between the telephone solicitor and customer.

CREDIT(S)

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*Michigan*

#### 445.111. Definitions

##### Sec. 1. As used in this act:

(a) "Home solicitation sale" means a sale of goods or services of more than \$25.00 in which the seller or a person acting for the seller engages in a personal, telephonic, or written solicitation of the sale, the solicitation is received by the buyer at a residence of the buyer, and the buyer's agreement or offer to purchase is there given to the seller or a person acting for the seller. Home solicitation sale does not include any of the following:

- (i) A sale made pursuant to a preexisting revolving charge account.
- (ii) A sale made pursuant to prior negotiations between the parties at a business establishment at a fixed location where goods or services are offered or exhibited for sale.
- (iii) A sale or solicitation of insurance by an insurance agent licensed by the commissioner of insurance.
- (iv) A sale made at a fixed location of a business establishment where goods or services are offered or exhibited for sale.
- (v) A sale made pursuant to a printed advertisement in a publication of general circulation.
- (vi) A sale of services by a real estate broker or salesperson licensed by the department of consumer and industry services.
- (vii) A sale of agricultural or horticultural equipment and machinery that is demonstrated to the consumer by the vendor at the request of either or both of the parties.

) "Fixed location" means a place of business where the seller or an agent, servant, employee, or solicitor of that seller primarily engages in the sale of goods or services of the same kind as would be sold at the residence of a buyer.

(c) "Business day" means Monday through Friday and does not include Saturday, Sunday, or the following business holidays: New Year's day, Martin Luther King's birthday, Washington's birthday, Memorial day, Independence day, Labor day, Columbus day, Veterans' day, Thanksgiving day, and Christmas day.

(d) "Federally insured depository institution" means a state or national bank, state or federal savings bank, state or federal savings and loan association, or state or federal credit union that holds deposits insured by an agency of the United States.

(e) As used in only the definition of home solicitation sales, "goods or services" does not include any of the following:

- (i) A loan, deposit account, or trust account lawfully offered or provided by a federally insured depository institution or a subsidiary or affiliate of a federally insured depository institution.
- (ii) An extension of credit that is subject to any of the following acts:
  - (A) The mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1651 to 445.1684.
  - (B) The secondary mortgage loan act, 1981 PA 125, MCL 493.51 to 493.81.
  - (C) The regulatory loan act, 1939 PA 21, MCL 493.1 to 493.24.
  - (D) The consumer financial services act, 1988 PA 161, MCL 487.2051 to 487.2072.
  - (E) 1984 PA 379, MCL 493.101 to 493.114.
  - (F) The motor vehicle sales finance act, 1950 (Ex Sess) PA 27, MCL 492.101 to 492.141.

iii) A sale of a security or interest in a security that is subject to the uniform securities act, 1964 PA 265, MCL 451.501 to 451.818.

(f) "Written solicitation" means a postcard or other written notice delivered to a buyer's residence that requests that the buyer contact the seller or seller's agent by telephone to inquire about a good or service, unless the postcard or other written notice concerns a previous purchase or order or specifies

the price of the good or service and accurately describes the good or service.

(g) "ADAD" or "automatic dialing and announcing device" means any device or system of devices that is used, whether alone or in conjunction with other equipment, for the purpose of automatically selecting or dialing telephone numbers.

(h) "Commission" means the public service commission.

(i) "Do-not-call list" means a do-not-call list of consumers and their residential telephone numbers maintained by the commission, by a vendor designated by the commission, or by an agency of the federal government, under section 1a. [FN1]

(j) "Existing customer" means an individual who has purchased goods or services from a person, who is the recipient of a voice communication from that person, and who either paid for the goods or services within the 12 months preceding the voice communication or has not paid for the goods and services at the time of the voice communication because of a prior agreement between the person and the individual.

(k) "Person" means an individual, partnership, corporation, limited liability company, association, governmental entity, or other legal entity.

(l) "Residential telephone subscriber" or "subscriber" means a person residing in this state who has residential telephone service.

(m) "Telephone solicitation" means any voice communication over a telephone for the purpose of encouraging the recipient of the call to purchase, rent, or invest in goods or services during that telephone call. **Telephone solicitation** does not include any of the following:

(i) A voice communication to a residential telephone subscriber with that subscriber's express invitation or permission prior to the voice communication.

(ii) A voice communication to an existing customer of the person on whose behalf the voice communication is made, unless the existing customer is a consumer who has requested that he or she not receive calls from or on behalf of that person under section 1c(1)(g). [FN2]

(iii) A voice communication to a residential telephone subscriber in which the caller requests a **face-to-face** meeting with the residential telephone subscriber to discuss a purchase, sale, or rental of, or investment in, goods or services but does not urge the residential telephone subscriber to make a decision to purchase, sell, rent, invest, or make a deposit on that good or service during the voice communication.

(n) "Telephone solicitor" means any person doing business in this state who makes or causes to be made a **telephone solicitation** from within or outside of this state, including, but not limited to, calls made by use of automated dialing and announcing devices or by a live person.

(o) "Vendor" means a person designated by the commission to maintain a do-not-call list under section 1a. [FN3] The term may include a governmental entity.

## CREDIT(S)

### 2002 Main Volume

Amended by P.A.1980, No. 108, § 1, Imd. Eff. May 10; P.A.1998, No. 126, Imd. Eff. June 10, 1998; P.A.1999, No. 18, Imd. Eff. April 28, 1999.

### 2003 Electronic Update

Amended by P.A.2002, No. 612, Eff. March 31, 2003.

[FN1] M.C.L.A. § 445.111a.

[FN2] M.C.L.A. § 445.111c(1)(g).

[FN3] M.C.L.A. § 445.111a.

## HISTORICAL AND STATUTORY NOTES

### 2003 Electronic Update

#### 2002 Legislation

P.A.2002, No. 612, in par. (e), in the introductory paragraph, substituted "As used in only the definition of home solicitation sales, 'Goods' " for " 'Goods' " and "any" for "either", and added subpar. (iii); and added pars. (g) through (o).

P.A.2002, No. 612, was not ordered to take immediate effect, and was approved and filed Dec. 20, 2003.

The general effective date for 2002 legislation is March 31, 2003.

### 2002 Main Volume

#### Source:

P.A.1971, No. 227, § 1, Imd. Eff. Jan. 3, 1972.

C.L.1970, § 445.111.

P.A.1978, No. 152, § 1, Imd. Eff. May 18.

The 1978 amendment rewrote this section, which prior thereto read:

" 'Home solicitation sale' means a sale of goods or services of more than \$35.00 in which the seller or a person acting for him engages in a personal solicitation of the sale at a residence of the buyer and the buyer's agreement or offer to purchase is there given to the seller or a person acting for him. It does not include a sale made pursuant to a preexisting revolving charge account, or a sale made pursuant to prior negotiations between the parties at a business establishment at a fixed location where goods or services are offered or exhibited for sale, or a sale of insurance by an insurance agent licensed by the commissioner of insurance. 'Fixed location' means a place of business where the seller or any of his agents, or agent, servant, or employee or solicitor of that seller primarily engages in the sale of goods or services of the same kind as would be sold at the residence of a buyer. It does not include a sale of agricultural or horticultural equipment and machinery which is demonstrated to the consumer by the vendor at the request of either or both of the parties."

The 1980 amendment added subd. (c) defining "Business day".

P.A.1998, No. 126, rewrote this section, which prior thereto read:

'Sec. 1. As used in this act:

"(a) 'Home solicitation sale' means a sale of goods or services of more than \$25.00 in which the seller or a person acting for the seller engages in a personal or telephonic solicitation of the sale at a

residence of the buyer and the buyer's agreement or offer to purchase is there given to the seller or a person acting for the seller. Home solicitation sale does not include a sale made pursuant to a reexisting revolving charge account, a sale made pursuant to prior negotiations between the parties at a business establishment at a fixed location where goods or services are offered or exhibited for sale, a sale of insurance by an insurance agent licensed by the commissioner of insurance, or a sale of services by a real estate broker or salesperson licensed by the department of licensing and regulation. Home solicitation sale does not include a sale of agricultural or horticultural equipment and machinery which is demonstrated to the consumer by the vendor at the request of either or both of the parties.

"(b) 'Fixed location' means a place of business where the seller or an agent, servant, employee, or solicitor of that seller primarily engages in the sale of goods or services of the same kind as would be sold at the residence of a buyer.

"(c) 'Business day' means Monday through Friday and shall not include Saturday, Sunday or the following business holidays: New Year's day, Martin Luther King's birthday, Washington's birthday, Memorial day, Independence day, Labor day, Columbus day, Veterans' day, Thanksgiving day, and Christmas day."

P.A.1999, No. 18, rewrote this section, which prior thereto read:

"Sec. 1. As used in this act:

"(a) 'Home solicitation sale' means a sale of goods or services of more than \$25.00 in which the seller or a person acting for the seller engages in a personal, written, or **telephonic solicitation** of the sale, the solicitation is received by the buyer at a residence of the buyer, and the buyer's agreement or offer to purchase is there given to the seller or a person acting for the seller. Home solicitation sale includes a sale arising from a postcard or other written notice delivered to a buyer's residence that requests that the buyer contact the seller or seller's agent by telephone to inquire about a good or service, unless a postcard or other written notice concerns a previous purchase or order or specifies the price of the good or service and accurately describes the good or service. Home solicitation sale does not include a sale made pursuant to a preexisting revolving charge account, a sale made pursuant to prior negotiations between the parties at a business establishment at a fixed location where goods or services are offered or exhibited for sale, a sale of insurance by an insurance agent licensed by the commissioner of insurance, a sale made pursuant to a printed advertisement in a publication of general circulation, or a sale of services by a real estate broker or salesperson licensed by the department of consumer and industry services. Home solicitation sale does not include a sale of agricultural or horticultural equipment and machinery that is demonstrated to the consumer by the vendor at the request of either or both of the parties.

"(b) 'Fixed location' means a place of business where the seller or an agent, servant, employee, or solicitor of that seller primarily engages in the sale of goods or services of the same kind as would be sold at the residence of a buyer.

"(c) 'Business day' means Monday through Friday and does not include Saturday, Sunday or the following business holidays: New Year's day, Martin Luther King's birthday, Washington's birthday, Memorial day, Independence day, Labor day, Columbus day, Veterans' day, Thanksgiving day, and Christmas day."

END OF DOCUMENT

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*Minnesota*

### 325E.311. Definitions

**Subdivision 1. Scope.** For the purposes of sections 325E.311 to 325E.316, the terms in subdivisions 2 to 6 have the meanings given them.

**Subd. 2. Caller.** "Caller" means a person, corporation, firm, partnership, association, or legal or commercial entity that attempts to contact, or that contacts, a residential subscriber in this state by using a telephone or a telephone line.

**Subd. 3. Caller identification service.** "Caller identification service" means a telephone service that permits telephone subscribers to see the telephone number of incoming telephone calls.

**Subd. 4. Commissioner.** "Commissioner" means the commissioner of commerce.

**Subd. 5. Residential subscriber.** "Residential subscriber" means a person who has subscribed to residential telephone services from a telephone company or the other persons living or residing with the subscribing person.

**Subd. 6. Telephone solicitation.** "Telephone solicitation" means any voice communication over a telephone line for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, whether the communication is made by a live operator, through the use of an automatic dialing-announcing device as defined in section 325E.26, subdivision 2, or by other means. Telephone solicitation does not include communications:

- (1) to any residential subscriber with that subscriber's prior express invitation or permission;
- (2) by or on behalf of any person or entity with whom a residential subscriber has a prior or current business or personal relationship;
- (3) by or on behalf of an organization that is identified as a nonprofit organization under state or federal law; or
- (4) by a person soliciting without the intent to complete, and who does not in fact complete, the sales presentation during the call, but who will complete the sales presentation at a later face-to-face meeting between the solicitor who makes the call and the prospective purchaser.

CREDIT(S)

2003 Electronic Pocket Part Update

Laws 2002, c. 367, § 1.  
END OF DOCUMENT

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Mississippi

§ 77-3-609. Exemptions

The provisions of Sections 77-3-601 through 77-3-619 shall not apply to:

- (a) A person engaging in commercial **telephone solicitation** where the solicitation is an isolated transaction and not done in the course of a pattern of repeated transactions of like nature.
- (b) A person making calls for religious, charitable, political, education or other noncommercial purposes, or a person **soliciting** for a nonprofit corporation if that corporation is properly registered as such with the Secretary of State and is included within the exemption of S.501(c)(3) or S.501(c)(6) of the Internal Revenue Code.
- (c) A person soliciting:
  - (i) Without the intent to complete or obtain provisional acceptance of a sale during the telephone solicitation;
  - (ii) Who does not make the major sales presentation during the **telephone solicitation**; or
  - (iii) Without the intent to complete, and who does not complete, the sales presentation during the **telephone solicitation**, but who completes the sales presentation at a later face-to-face meeting \* between the seller and the prospective purchaser. However, if a seller, directly following a **telephone solicitation**, causes an individual whose primary purpose it is to go to the prospective purchaser to collect the payment or deliver any item purchased, this exemption does not apply.
- (d) Any licensed securities, commodities, or investments broker, dealer or investment advisor, when **soliciting** within the scope of his license. As used in this section, "licensed securities, commodities, or investments broker, dealer or investment advisor" means a person subject to license or registration as such by the Securities and Exchange Commission, by the National Association of Securities Dealers or other self-regulatory organization as defined by the Securities Exchange Act of 1934 (15 U.S.C. Sec. 781), or by an official or agency of this state or of any state of the United States.
- (e) Any licensed associated person of a securities, commodities, or investments broker, dealer or investment advisor, when soliciting within the scope of his license. As used in this section, "licensed associated person of a securities, commodities, or investment broker, dealer or investment advisor" means any associated person registered or licensed by the National Association of Securities Dealers or other self-regulatory organization as defined by the Securities Exchange Act of 1934 (15 U.S.C. Sec. 781) or by an official or agency of this state or of any state of the United States.
- (f) A person primarily soliciting the sale of a newspaper, magazine or periodical of general circulation by its publisher, or by the publisher's agent through written agreement.
- (g) A book, video or record club or contractual plan or arrangement:
  - (i) Under which the seller provides the consumer with a form which the consumer may use to instruct the seller not to ship the offered merchandise;
  - (ii) Which is regulated by the Federal Trade Commission trade regulation concerning "use of negative option plans by sellers in commerce"; or
  - (iii) Which provides for the sale of books, records or videos which are not covered under paragraphs (i) or (ii), including continuity plans, subscription arrangements, standing order arrangements, supplements and series arrangements under which the seller periodically ships merchandise to a consumer who has consented in advance to receive such merchandise on a periodic basis.
- (h) Any supervised financial institution or parent, subsidiary or affiliate thereof. As used in this section, "supervised financial institution" means any commercial bank, trust company, savings and loan association, mutual savings bank, credit union, industrial loan company, consumer finance lender, commercial finance lender or insurer, provided that the institution is subject to supervision by an official or agency of this state, of any state or of the United States.



- (i) Any licensed insurance or real estate broker, agent, customer representative or solicitor when soliciting within the scope of his license. As used in this section, "licensed insurance or real estate broker, agent, customer representative or solicitor" means any insurance or real estate broker, agent, customer representative or solicitor licensed by an official or agency of this state or of any state of the United States.
- (j) A person soliciting the sale of services provided by a cable television system operating under authority of a franchise or permit.
- (k) A person who solicits sales by periodically publishing and delivering a catalog of the seller's merchandise to prospective purchasers, if the catalog:
  - (i) Contains a written description or illustration of each item offered for sale;
  - (ii) Includes the business address or home office address of the seller;
  - (iii) Includes at least twenty-four (24) pages of written material and illustrations and is distributed in more than one (1) state; or
  - (iv) Has an annual circulation by mailing of not less than two hundred fifty thousand (250,000).
- (l) A person who solicits contracts for the maintenance or repair of goods previously purchased from the person making the solicitation or on whose behalf the solicitation is made.
- (m) A telephone company, or its subsidiary or agents, or a business which is regulated by the Mississippi Public Service Commission, or a Federal Communications Commission licensed cellular telephone company or other bona fide radio telecommunication services provider.
- (n) Any publicly traded corporation which has securities registered with the Securities and Exchange Commission which are a reported security within the meaning of subparagraph (4) of Regulation Section 240.11a3-1, (a), under the Securities Exchange Act of 1934, or which is exempt from registration under subparagraph (A), (B), (C), (E), (F), (G) or (H) of paragraph (2) of subsection (g) of Section 12 of the Securities Exchange Act of 1934 (15 U.S.C. Section 781), or any subsidiary of such corporation.
- (o) A business soliciting exclusively the sale of telephone answering services, provided that the telephone answering services will be supplied by the solicitor.
- (p) A person soliciting a transaction regulated by the Commodity Futures Trading Commission if the person is registered or temporarily licensed for this activity with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. Section 1 et seq.) and the registration or license has not expired or been suspended or revoked.
- (q) A person soliciting the sale of food or produce if the solicitation neither intends to result in, or actually results in, a sale which costs the purchaser in excess of One Hundred Dollars (\$100.00).
- (r) A person soliciting business from prospective consumers who have an established business relationship with, or who have previously purchased from, the business enterprise for which the solicitor is calling, if the solicitor is operating under the same exact business name.
- (s) A person who has been operating, for at least one (1) year, a retail business establishment under the same name as that used in connection with telemarketing, and both of the following occur on a continuing basis:
  - (i) Either products are displayed and offered for sale, or services are offered for sale and provided at the business establishment; and
  - (ii) A majority of the seller's business involves the buyer obtaining such products or services at the seller's location.
- (t) Any telephone marketing service company which provides telemarketing sales services under contract to sellers and has been operating continuously for at least five (5) years under the same business name and seventy-five percent (75%) of its contracts are performed on behalf of persons exempted from Sections 77-3-601 through 77-3-619.

CREDIT(S)

1999 Main Volume

Laws 1993, Ch. 538, § 5, eff. July 1, 1993.  
END OF DOCUMENT

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## 407.1095. Definitions

*Missouri*

As used in sections 407.1095 to 407.1110, the following words and phrases mean:

- (1) "Caller identification service", a type of telephone service which permits telephone subscribers to see the telephone number of incoming telephone calls;
- (2) "Residential subscriber", a person who has subscribed to residential telephone service from a local exchange company or the other persons living or residing with such person;
- (3) "Telephone solicitation", any voice communication over a telephone line from a live operator, through the use of ADAD equipment or by other means for the purpose of encouraging the purchase or rental of, or investment in, property, goods or services, but does not include communications:
  - (a) To any residential subscriber with that subscriber's prior express invitation or permission;
  - (b) By or on behalf of any person or entity with whom a residential subscriber has had a business contact within the past one hundred eighty days or a current business or personal relationship;
  - (c) By or on behalf of an entity organized pursuant to Chapter 501(c)(3) of the United States Internal Revenue Code, while such entity is engaged in fund-raising to support the charitable purpose for which the entity was established provided that a bona fide member of such exempt organization makes the voice communication;
  - (d) By or on behalf of any entity over which a federal agency has regulatory authority to the extent that:
    - a. Subject to such authority, the entity is required to maintain a license, permit or certificate to sell or provide the merchandise being offered through telemarketing; and
    - b. The entity is required by law or rule to develop and maintain a no-call list;
    - (e) By a natural person responding to a referral, or working from his or her primary residence, or a person licensed by the state of Missouri to carry out a trade, occupation or profession who is setting or attempting to set an appointment for actions relating to that licensed trade, occupation or profession within the state or counties contiguous to the state.

## CREDIT(S)

2001 Main Volume

(L.2000, S.B. No. 763, § A.)

<General Materials (GM) - References, Annotations, or Tables>

## LIBRARY REFERENCES

2001 Main Volume

Trade Regulation §61 et seq.

Westlaw Topic No. 382.

C.J.S. Trade Marks, Trade Names, and Unfair Competition § 380.

END OF DOCUMENT

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1. Definitions.**

As used in [sections 1 through 6] the following definitions apply:

- (1) "Caller identification service" means a type of telephone service which permits telephone subscribers to see the telephone number of incoming telephone calls.
- (2) "Department" means the department of administration provided for in 2-15-1001.
- (3) "Residential subscriber" means a person who has subscribed to residential telephone service from a local exchange company and the other persons living or residing with the person.
- (4) "Telephone solicitation" means any voice communication over a telephone line from a live operator, through the use of an automatic dialing-announcing device, or by other means for the purpose of encouraging the purchase of, rental of, or investment in property, goods, or services. Telephone solicitation does not include communications:
  - (a) to any residential subscriber with that subscriber's prior express invitation or permission;
  - (b) by or on behalf of any person or entity with whom a residential subscriber has had a business contact within the past 180 days or has a current business or personal relationship;
  - (c) by or on behalf of an entity organized pursuant to section 501(c)(1) through 501(c)(6) of the Internal Revenue Code, 26 U.S.C. 501(c)(1) through 501(c)(6), while the entity is engaged in fundraising to support the charitable purpose for which the entity was established and provided that a bona fide member of the exempt organization makes the voice communication;
  - (d) by or on behalf of any entity over which a federal agency has regulatory authority to the extent that:
    - (i) subject to that authority, the entity is required to maintain a license, permit, or certificate to sell or provide the merchandise being offered through telemarketing; and
    - (ii) the entity is required by law or rule to develop and maintain a no-call list;
  - (e) by a natural person responding to a referral or working from the person's primary residence; or
  - (f) by a person licensed by the state of Montana to carry out a trade, occupation, or profession who is setting or attempting to set an appointment for actions relating to that licensed trade, occupation, or profession within the state.

**Section 2. Telephone solicitation of residential subscribers on no-call list prohibited.** A person or entity may not make or cause to be made any telephone solicitation to the telephone line of any residential subscriber in this state who has given notice to the department, in accordance with rules promulgated pursuant to [section 3], of the residential subscriber's objection to receiving telephone solicitations.

**Section 3. Department to create no-call list database -- rules -- inclusion of national database -- database not public record -- no cost to subscribers.** (1) The department shall establish and provide for the operation of a database containing a list of names and telephone numbers of residential subscribers who object to receiving telephone solicitations. The department must have the database in operation no later than January 1, 2004. A residential subscriber may be listed in the database without cost to the subscriber.

(2) Not later than January 1, 2004, the department shall promulgate rules and regulations governing the establishment of a state no-call database that are necessary and appropriate to fully implement the provisions of [sections 1 through 6]. The rules must include but are not limited to rules specifying:

(a) the methods by which each residential subscriber may give notice to the department or a contractor designated by the department of the residential subscriber's objection to receiving telephone solicitations or the methods by which the residential subscriber may revoke the notice;

(b) the length of time for which a notice of objection is effective and the effect of a change of telephone number on the notice;

(c) the methods by which pertinent information may be collected and added to the no-call database;

(d) the methods for obtaining access to the no-call database by any person or entity desiring to make telephone solicitations if that person or entity is required to avoid calling the residential subscribers included in the no-call database;

(e) the cost to be assessed to a person or entity that is required to obtain access to the no-call database; and

(f) other matters relating to the no-call database that the department considers desirable.

(3) If the federal communications commission establishes a single national database of telephone

numbers of residential subscribers who object to receiving telephone solicitations pursuant to 47 U.S.C.

(c)(3), the department shall include that part of the single national database that relates to Montana in the no-call database established pursuant to this section.

(4) Information contained in the no-call database established pursuant to this section may be used only for the purpose of compliance with [section 2] and this section or in a proceeding or action pursuant to [section 5]. The information may not be considered a public record pursuant to Title 2, chapter 6.

(5) In April, July, October, and January of each year, the department shall make a reasonable attempt to obtain subscription listings of residential subscribers in this state who have arranged to be included on any national no-call list and add those names to the state no-call list.

**Section 4. Interference with caller identification service prohibited.** (1) Any person or entity who makes a telephone solicitation to the telephone line of any residential subscriber in this state shall, at the beginning of the call, state clearly the identity of the person or entity initiating the call.

(2) A person or entity who makes a telephone solicitation to the telephone line of a residential subscriber in this state may not knowingly use any method to block or otherwise circumvent the residential subscriber's use of a caller identification service.

**Section 5. Penalties -- department to enforce civil, criminal, and injunctive relief -- private actions -- defenses -- statute of limitations.** (1) (a) The department or a county attorney may initiate proceedings relating to a knowing violation or threatened knowing violation of [section 2 or 4].

(b) The proceedings may include a request for any of the following:

- (i) an injunction;
- (ii) a civil penalty up to a maximum of \$5,000 for each knowing violation;
- (iii) additional relief that a court of competent jurisdiction may order.

(c) The department may issue investigative demands, issue subpoenas, administer oaths, and conduct hearings in the course of investigating a violation of [section 2 or 4].

(2) In addition to the penalties provided in subsection (1), any person or entity that violates [section 4] is subject to all penalties, including criminal penalties, remedies, and procedures provided in the

unfair trade practices and consumer protection laws, as provided for in Title 30, chapter 14, parts 1 and 2. The remedies available in this section are cumulative and in addition to any other remedies available by law.

(3) Any residential subscriber who has received more than one telephone solicitation within any 12-month period by or on behalf of the same person or entity in violation of [section 2 or 4] may bring an action to:

- (a) enjoin the violation; and
- (b) recover the greater of:
  - (i) the actual monetary loss from a knowing violation; or
  - (ii) \$5,000 in damages for each knowing violation.

(4) It is a defense in any action or proceeding brought pursuant to this section that the defendant has established and implemented, with due care, reasonable practices and procedures to effectively prevent telephone solicitations in violation of [section 2 or 4].

(5) An action or proceeding may not be brought pursuant to this section more than 2 years after:

- (a) the person bringing the action knew or should have known of the occurrence of the alleged violation; or
- (b) the termination of any proceeding or action arising out of the same violation or violations by the state of Montana.

(6) A court of this state may exercise personal jurisdiction, in the manner provided by law, over any nonresident or the nonresident's executor or administrator as to an action or proceeding authorized by this section.

(7) The remedies, duties, prohibitions, and penalties provided in [sections 1 through 6] are not exclusive and are in addition to all other causes of action, remedies, and penalties provided by law.

(8) A provider of telephone caller identification service may not be held liable for violations of [section 2 or 4] that are committed by other persons or entities.

**Section 6. Telephone solicitation no-call list administration account -- purpose and administration.** (1) There is a telephone solicitation no-call list administration account in the state

special revenue fund for administration of [sections 1 through 6] by the department.

(2) Revenue generated from fees collected from persons or entities obtaining access to the no-call list database and any civil penalties recovered by the department pursuant to [section 5] must be deposited into the telephone solicitation no-call list administration account.

Section 7. Codification instruction. [Sections 1 through 6] are intended to be codified as an integral part of Title 30, chapter 14, and the provisions of Title 30, chapter 14, apply to [sections 1 through 6].

Section 8. Effective date. [This act] is effective July 1, 2003.

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Latest Version of HB 424 (*HB0424.ENR*)

Processed for the Web on April 29, 2003 (3:54pm)

New language in a bill appears underlined, deleted material appears stricken.

Sponsor names are handwritten on introduced bills, hence do not appear on the bill until it is reprinted.

See the [status of this bill](#) for the bill's primary sponsor.

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